

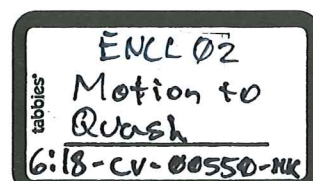
JANE VETTO, OSB #914564
 Marion County Counsel
 jvetto@co.marion.or.us
 JOE MILLER, OSB #160851
 Assistant Legal Counsel
 jcmiller@co.marion.or.us
 P.O. Box 14500
 Salem, OR 97309
 Telephone: (503) 588-5220
 Of Attorneys for Marion County, Third Party

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 EUGENE DIVISION

LARISSA WHITE,)	Civil No. 6:18-cv-00550-MK
)	
)	DECLARATION OF COUNSEL
Plaintiff,)	IN SUPPORT OF MOTION TO QUASH
)	
v.)	
)	
CITY OF TURNER POLICE CHIEF DON)	
TAYLOR; by and through the CITY OF)	
TURNER POLICE DEPARTMENT, a political)	
Subdivision of TURNER, OREGON,)	
)	
Defendants.)	

I, Joseph C. Miller Jr., hereby declare as follows:

1. I am employed as an Assistant Legal Counsel for Marion County.
2. I am representing the Marion County Sheriff's Office in this matter, as the Marion County Sheriff's Office is the custodian of records that are subject to the Subpoena *Duces Tecum* issued by Plaintiff on January 25, 2019.




3. Prior to the issuance of this subpoena, Counsel for Plaintiff, Daniel Thenell, and I discussed the information that he was seeking from the Marion County Sheriff's Office during a phone call on January 23, 2019.
4. While we disagreed on the production of certain documents from the Marion County District Attorney's office, we had agreed on documents to be provided by the Marion County Sheriff's Office.
5. Mr. Thenell provided me with an email later that evening on January 23, 2019 outlining that he was seeking:
 - a. Documents that relate to a professional standards investigation involving MCSO Deputy Chris White, spouse of Plaintiff, related to a complaint made by the City of Turner or Turner Police Dept.,
 - b. Any documents related to Plaintiff and her employment with Turner PD, and
 - c. Any documents related to Plaintiff applying for a job with the Marion County Sheriff's Office. *Encl 01*.
6. The Subpoena *Duces Tecum* issued by Plaintiff requested records that exceeded the scope of the records discussed in our phone call on January 23, 2019 and recorded by email. *Encl 01*.
7. On February 7, 2019 I attempted to clarify the scope of the subpoena and did not receive a responsive answer. *Encl 02* Pgs. 5-6.
8. On February 8, 2019 I attempted to clarify the scope of the subpoena and did not receive a responsive answer. *Id.* At Pg. 1.
9. I have attempted to address these issues with Mr. Thenell to no avail.

////

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and subject to penalty for perjury.

DATED this 8th day of February, 2019


Joe Miller, OSB# 160851
Assistant Legal Counsel, Marion County

Enclosures

1. Email Correspondence dated 01.23.2019
2. Email Correspondence dated 02.07.2019 & 02.08.2019

From: Dan Thenell <dan@thenelllawgroup.com>
To: Joseph Miller <JCMiller@co.marion.or.us>
CC: Emerson Lenon <emerson@thenelllawgroup.com>, Laura Pride <laura@thenelllawgroup.com>, Brenda May <brenda@thenelllawgroup.com>
Date: 1/23/2019 9:13 PM
Subject: RE: US District Court Case No. 6:18-cv-00550-MK White v. City of Turner- Conferral on Subpoenas

Joe:

Thank you for the call today.

1. I am looking for any documents in possession of the Marion County Sheriff's Office, not just with Lt. Hunter, that relate to Chris White's IA started by the complaint from Turner and any documents related to Lacey White and her employment with Turner. I also believe Lacey White applied for a job with Marion County, and believe our request encompasses those documents.
2. We will serve Beglau a subpoena.
3. As for Paige Clarkson and the Marion County DA's Office, I want all policies, procedures, manuals, training material and instructions related to investigating, reviewing, analyzing and placing an officer on a Brady List, Brady Index, or prohibited testimony list. I also all documents related to any peace officers on the brady list from any agency in Marion County. I do not want any documents related to DOC personnel, just city, county and state officers.

I hope this helps.

Dan

Daniel E. Thenell
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THENELL LAW GROUP, PC
 OREGON ♦ WASHINGTON ♦ IDAHO ♦ ALASKA ♦ CALIFORNIA ♦ NEVADA



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From: Joseph Miller <JCMiller@co.marion.or.us>
Sent: Wednesday, January 23, 2019 5:35 PM
To: Dan Thenell <dan@thenelllawgroup.com>
Subject: US District Court Case No. 6:18-cv-00550-MK White v. City of Turner- Conferral on Subpoenas

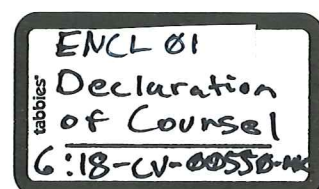
Mr. Thenell,

Thank you again for your phone call this evening. Please provide me with a more specific list of documents being sought from Lt. Hunter and I will be happy to review and amend/withdraw the Motion to Quash as appropriate. I'm hopeful this will resolve Marion County's objections to the subpoena *duces tecum* for Lt. Hunter. I agree that the Motion to Quash the subpoena *duces tecum* for Mr. Beglau is moot since you will be personally serving him with a new subpoena.

Also, please provide me with a more specific list of documents being sought from Mr. Clarkson that way we can limit the issues on any motions necessary.

Very Respectfully,

Joe Miller
 Assistant Legal Counsel
 Marion County Counsel
 555 Court St. NE Ste 5242



Salem, OR 97301

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F: (503)373-4367

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From: Joseph Miller
To: Dan Thenell <dan@thenelllawgroup.com>
CC: MW Webb <cisoregon.org>; Steve Kraemer <skraemer@cisoregon.org>; Andrew D. Campbell <Andrew@heltzel.com>; Brenda May <brenda@thenelllawgroup.com>; Emerson Lenon <emerson@thenelllawgroup.com>; Laura Pride <laura@thenelllawgroup.com>
Date: 2/8/2019 9:21 AM
Subject: Re: US District Court Case N. 6:18-cv-00550-MK White v City of Turner- Marion County Subpoenas

Mr. Thenell,

If you want to depose Ms. Clarkson on the facts of this case you will need to either issue a notice of deposition to Ms. Clarkson or to DOJ. Our office got involved in this matter because a records subpoena was issued and needed a response, any issues regarding prosecutorial functions are represented by DOJ. In effort to avoid undue delay I will reach out to DOJ to help get them up to speed. I received the certified mail receipt for the response to your records subpoena this morning, if there are any issues with the response to the records subpoena I can still assist with those.

Regarding Lt. Hunter, I submitted a Motion to Quash on the records subpoena and I have not withdrawn that Motion, despite my attempts to clarify and narrow the request in an effort to withdraw the Motion. Our office would represent Lt. Hunter at a deposition regarding this matter so I can schedule a deposition date for Mr. Hunter. Since I anticipate that the scope of records requested from Lt. Hunter will eventually be narrowed, we will continue to retrieve records responsive to Lt. Hunter's first hand knowledge of the PSI for Deputy White, correspondence with or regarding the Plaintiff, and correspondence with Turner officials in order to avoid undue delays. Again, please let me know if you are agreeable to the stipulations outlined in the Draft Notice of Withdrawal of Motion to Quash sent to you on January

If you have dates already scheduled for other depositions in this matter, please let me know and I will do everything I can to ensure that Lt. Hunter and someone from my office is available on one of those dates. We can then have a notice of deposition sent to Lt. Hunter for that date. As a courtesy to the other counsels who have been included on this I want to make sure it is clear that Ms. Clarkson and Lt. Hunter will not be attending any deposition on Monday 2/11/2019.

I have also not received a response regarding the Subpoena Duces Tecum issued to the Marion County Sheriff's Office Custodian of Record. Again, Exhibit A to your subpoena is overly broad, unduly burdensome, and gave an unreasonable response time based on the breadth of what was requested. If you are willing to agree that the Subpoena should be limited to the following topics (that we discussed via phone call and email on January 23):

- Documents related to the IA for Deputy White (initiated by complaint from Turner),
- Any documents related to Plaintiff and her employment with Turner, and
- Any documents regarding a job application Plaintiff submitted with Marion County,

then I can have those records produced in the next 14 days. If I do not receive an affirmative response to Marion County's request to narrow the records subpoena issued to the Marion County Sheriff's Office Custodian of Record by 2 p.m. today (2/8/19) then I will have no choice but to file an Motion to Quash.

Please let me know any dates in which you would like to schedule a deposition for Lt. Hunter and I will do my best to make that work.

Very Respectfully,

Joe Miller
 Assistant Legal Counsel
 Marion County Counsel
 555 Court St. NE Ste 5242
 Salem, OR 97301
 T: (503)588-5220
 F: (503)373-4367

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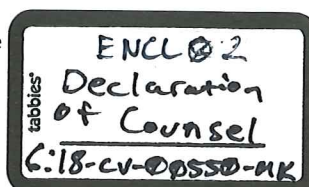
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>>> Dan Thenell <dan@thenelllawgroup.com> 2/7/2019 4:16 PM >>>

When you and I talked, I told you I would be deposing both. I am not going to cancel based on your technicality argument. You can involve the Court if you see fit or you can figure out how to make Monday work.

Daniel E. Thenell
 Partner
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 F: (503) 372-6496
dan@thenelllawgroup.com
www.thenelllawgroup.com

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On Feb 7, 2019, at 3:43 PM, Joseph Miller <JCMiller@co.marion.or.us> wrote:

Mr. Thenell,

Regarding Records Subpoenas of Clarkson and Hunter

FRCP 30(b) Notice of the Deposition; Other Formal Requirements:

(3) Method of Recording.

(a) Method Stated in Notice. The party who notices the deposition must in the notice state the method of recording the testimony.

FRCP 45(a)(1) Form and Contents.

(B) Command to Attend Deposition--Notice of the Recording Method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

Your records subpoena did not contain the required method of recording notice required in a notice of deposition, hence why we were under the impression that you were utilizing a Subpoena *Duces Tecum* to obtain records and not as notice of a oral deposition/perpetuation deposition. Your cover letter only mentioned production of documents and a production date, nothing regarding a deposition. Additionally the heading of the subpoena stated "Subpoena Duces Tecum," not "Plaintiff's Notice of Deposition," "Subpoena To Testify At A Deposition," or similar heading indicating the intent of issuance was to depose the person issued the subpoena. In an email exchange on January 24, 2019 I sought clarification on this issue and affirmed the County's understanding that these subpoenas were for production of records, that references to deposition were for authenticity that could be addressed via affidavit, and that depositions regarding the facts of this case would occur at a future time. I never received a response to this email.

Regarding Subpoena *Duces Tecum* Issued to MCSO Custodian

The Subpoena *Duces Tecum* issued to the MCSO Custodian of Record used the same broad "any and all" language that drew my objection in the records subpoena issued to Lt. Hunter. After our phone call on January 23, 2019 you emailed me and stated you were looking for records regarding:

- Documents related to the IA for Deputy White (initiated by complaint from Turner)
- Any documents related to Plaintiff and her employment with Turner
- Any documents regarding a job application Plaintiff submitted with Marion County.

While those requests are relatively narrow and will be less burdensome to produce, Exhibit A to the records subpoena you issued after our conversation renewed the same overly broad "any and all" documents relating to Larissa White, Don Taylor, Turner PD, etc. If you are an agreement the records you are seeking are what you recapped to me on January 23, 2019 then I do not have any objections and would like schedule a new production date. If your request is broader than what was recapped on January 23, 2019, please let me know. Again, I want to avoid unnecessary Motions to Quash.

Very Respectfully,

Joe Miller
Assistant Legal Counsel
Marion County Counsel
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>>> Dan Thenell <dan@thenelllawgroup.com> 2/7/2019 12:56 PM >>>

You continue to tell me my subpoenas did not have the required notices. Please respond back with what you notice you allege was required. I will then decide whether appearance Monday will be excused. We scheduled a full day of depositions with opposing counsel and to have this objection to appearance raised this late is very disruptive to my calendar and potentially to the case schedule.

Additionally, I need you to reply back to all in this message what you propose for narrowing on document subpoenas.

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<IMAGE.jpeg>

From: Joseph Miller <JCMiller@co.marion.or.us>
Sent: Thursday, February 07, 2019 12:12 PM
To: Dan Thenell <dan@thenelllawgroup.com>
Cc: Steve Kraemer <skraemer@cisoregon.org>; Andrew D. Campbell <Andrew@Heltzel.com>; ivetto@marion.or.us; Brenda May <brenda@thenelllawgroup.com>; Emerson Lenon <emerson@thenelllawgroup.com>; Laura Pride <laura@thenelllawgroup.com>
Subject: RE: US District Court Case N. 6:18-cv-00550-MK White v City of Turner- Marion County Subpoenas

Mr. Thenell,

Your subpoena was understood to be a Subpoena *Duces Tecum* issued pursuant to FRCP 45 for production of documents and that any deposition was: 1) for the authentication of documents and 2) could be resolved by providing the records with an affidavit of the person producing the records. Your records subpoena did not contain the notice requirements required by FRCP 45(a)(B) or FRCP 30(b)(3)(a), which led to me to believe your records subpoena was for the production of documents and not a notice of deposition regarding the facts of White v. City of Turner. I attempted to clarify this in my email of January 29, 2019.

Since you are seeking to depose Ms. Clarkson, in her prosecutorial role, to testify regarding the facts of White v. City of Turner instead of obtaining records, please issue a new subpoena/notice of deposition to Ms. Clarkson so that she can obtain representation through the Oregon Dept. of Justice.

Regarding the records subpoena for Lt. Hunter, a new date will be needed. We also need to resolve the stipulations that we discussed on January 23, 2019 and the Notice of Withdrawal recording the stipulations that I sent you on January 29, 2013 via email. If we can clarify the stipulations, then I can withdraw the previously filed Motion to Quash, and we can schedule a new production of documents date and deposition date.

Also, please let me know your position on clarifying the Subpoena *Duces Tecum* for production of documents issued to Marion County Sheriff's Office Custodian of Record as discussed in my email this morning. I would prefer to avoid filing a Motion to Quash on this subpoena and believe that the scope of the subpoena can be narrowed.

Very Respectfully,

Joe Miller
 Assistant Legal Counsel
 Marion County Counsel
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 T: (503)588-5220
 F: (503)373-4367

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>>> Dan Thenell <dan@thenelllawgroup.com> 2/7/2019 10:54 AM >>>
 Mr. Miller:

I am growing frustrated with your tone and lack of understanding of federal rules of civil procedure. Rule 30. Depositions by Oral Examination states as follows:

(a) When a Deposition May Be Taken.

(1) *Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45

This is the exact procedure we followed. Read the local rules and federal civil rules 30 and 45. Ms. Clarkson and Lt. Hunter were properly served and I expect them to appear at my office on Monday. As for your request for clarification from January 29, 2019, I did not read that as wondering whether attendance was necessary. If you go back and read the subpoenas there are boxes checked for appearance and boxes checked for bringing documents.

I will move for sanctions against the County if these appearances are not honored. If you would like to discuss a different date, I am amenable to that as well.

Dan

Daniel E. Thenell

Partner

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<IMAGE.jpeg>

From: Joseph Miller <JCMiller@co.marion.or.us>

Sent: Thursday, February 07, 2019 10:23 AM

To: Dan Thenell <dan@thenelllawgroup.com>

Cc: Emerson Lenon <emerson@thenelllawgroup.com>; Laura Pride <laura@thenelllawgroup.com>

Subject: Re: US District Court Case N. 6:18-cv-00550-MK White v City of Turner- Marion County Subpoenas

Mr. Thenell,

The subpoena was issued pursuant to FRCP 45 for production of documents, not FRCP 27 or 30. There are requirements for noticing depositions that your subpoena did not meet. I attempted to clarify any confusion on this issue in my email of January 29, 2019 and received no response.

Very Respectfully,

Joe Miller

Assistant Legal Counsel

Marion County Counsel

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>>> Dan Thenell <dan@thenelllawgroup.com> 2/7/2019 9:54 AM >>>

She was served. It's not perpetuation depo. It's a fact depo. They all are.

Daniel E. Thenell

Partner

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OR 97223.

On Feb 7, 2019, at 9:53 AM, Joseph Miller <JCMiller@co.marion.or.us> wrote:

Mr. Thenell,

Ms. Clarkson will not be there as she was not noticed properly for a perpetuation deposition. I requested clarification on this issue in my email of January 29, 2019.

Very Respectfully,

Joe Miller
Assistant Legal Counsel
Marion County Counsel
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>>> Dan Thenell <dan@thenelllawgroup.com> 2/7/2019 9:51 AM >>>
I am still deposing Paige Monday about facts. I expect her attendance.

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On Feb 7, 2019, at 9:49 AM, Joseph Miller <JCMiller@co.marion.or.us> wrote:

Mr. Thenell,

I wanted to provide with you updates and an objection regarding the Subpoenas that have been sent to Marion County.

Clarkson Subpoena- Responsive documents for that subpoena were sent certified mail with the Affidavit on February 4th, 2019. As such, a deposition to authenticate the records is not necessary.

Hunter Subpoena- We have most of the responsive records retrieved pursuant to our January 23, 2019 phone call, however we will need to conduct a search for emails as there maybe email correspondence between Lt. Hunter and your client, from her time at Turner Police Dept., that needs to be retrieved. Lt. Hunter will complete the affidavit so that a deposition is not necessary to authenticate records.

Marion County Sheriff's Office Subpoena- Exhibit A of your subpoena is overly broad and due to the breadth of records sought provides unreasonable response time (14 days). Please identify specific MCSO personnel whose correspondence is sought. During our January 23, 2019 phone call you stated concern that personnel from MCSO had contacted DPSST regarding your client. This type of more narrowly focused topic allows us to more precisely search for records that maybe responsive to your subpoena. I am requesting a clearer list

of personnel and/or topics in order to respond to your subpoena. Please provide me with clarification in order to avoid having to file a Motion to Quash, which by rule is due tomorrow.

I never received a response from you regarding the Notice of Withdrawal of Motions to Quash with the stipulations serving as the basis to withdraw the Motions, the Draft Notice was emailed to you and your staff on January 29, 2019. As a Third Party to this matter, it is my intention to avoid protracted and unnecessary discovery disputes, however I must represent my client. If we are unable to agree or finalize the stipulations regarding the Notice of Withdrawal of Motions to Quash then I will not withdraw the Motions to Quash. As I have outlined above, we are working to provide you with responsive records regarding the Hunter and MCSO Subpoenas, we just need the stipulations/clarifications so that everyone is clear on the documents being provided and to avoid future disputes/motions regarding production of documents in this matter.

If you have any further questions, please do not hesitate to contact me at (503)588-5220 or via email.

Very Respectfully,

Joe Miller
Assistant Legal Counsel
Marion County Counsel
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